

96-456

**MARIPOSA COUNTY
BOARD OF SUPERVISORS**

**AGENDA
ACTION FORM**

**DATE: 11/12/96
AGENDA ITEM NO.: CA-6**

DEPARTMENT: County Counsel **BY:** Jeffrey G. Green **PHONE:** 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No_X)

Authorize Counsel to join in a Motion filed by Los Angeles and Santa Clara Counties to enforce the assessment formula that Pacific Bell agreed to use in accordance with the May 1992 Settlement Agreement approved by all 58 counties, 27 public utilities, the State Board of Equalization and the Attorney General. Pacific Bell is now seeking to compel the State Board of Equalization to change, i.e., reduce, the settled assessment formula by which all parties agreed upon. A copy of the Motion is included in this action together with an estimate of the annual impact that a reduction of \$50 million in taxes paid by Pacific Bell statewide would have on each county.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On April 28, 1992, the Board adopted Resolution No. 92-221 authorizing the Chairperson to sign Settlement Agreements with the rate based regulated utility companies.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- Authorize Counsel to join in Motion.
- Do not give authorization to Counsel.

<p>COSTS: (X) Not Applicable</p> <p>A. Budgeted current FY \$ _____</p> <p>B. Total anticipated costs \$ _____</p> <p>C. Required additional funding \$ _____</p> <p>D. Internal transfers \$ _____</p> <p>SOURCE: () 4/5ths Vote Required</p> <p>A. Unanticipated revenues \$ _____</p> <p>B. Reserve for contingencies \$ _____</p> <p>C. Source description: _____</p> <p>Balance in Reserve for Contingencies, if approved: \$ _____</p>	<p>SPECIAL INSTRUCTIONS: List the attachments and number the pages consecutively:</p> <p>Notice of Participation and Motion to Enforce Assessment of Taxpayer No. 279. Estimate of amount at stake.</p> <p>_____</p> <p>_____</p>
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<p>CLERK'S USE ONLY:</p> <p>Res. No.: <u>96-456</u> Ord. No. _____</p> <p>Vote - Ayes: <u>5</u> Noes: _____</p> <p>Absent: _____ Abstained: _____</p> <p>() Approved () Denied</p> <p>() Minute Order Attached () No Action Necessary</p> <p>The foregoing instrument is a correct copy of the original on file in this office. Date: _____</p> <p>ATTEST: <u>MARGIE WILLIAMS, Clerk of the Board</u> County of Mariposa, State of California</p> <p>By: _____ Deputy</p>	<p>ADMINISTRATIVE OFFICER'S RECOMMENDATION: This item on agenda as:</p> <p><input checked="" type="checkbox"/> Recommended</p> <p><input type="checkbox"/> Not Recommended</p> <p><input type="checkbox"/> For Policy Determination</p> <p><input type="checkbox"/> Submitted with Comment</p> <p><input type="checkbox"/> Returned for Further Action</p> <p>Comment: _____</p> <p>A.O. Initials: <u>JG</u></p>
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13 Attorney for COUNTY OF SANTA CLARA

14 BEFORE THE STATE BOARD OF EQUALIZATION
15 OF THE STATE OF CALIFORNIA

16 In the Matter of the Assessment)
17 of the Unitary Property)
18 of Pacific Bell,)
19 Valued as of January 1, 1996)

20 NOTICE OF PARTICIPATION AND
21 MOTION TO ENFORCE ASSESSMENT
22 OF TAXPAYER NO. 279

23 COUNTIES OF LOS ANGELES and)
24 SANTA CLARA,)

25 Date: October 9, 1996

26 Real Parties in Interest)
27)
28)

Time: 1:30 pm

29 NOTICE IS HEREBY GIVEN that on October 9, 1996, at 1:30 p.m., or as
30 soon thereafter as the matter may be heard by the Board of Equalization in
31 Sacramento, the County of Los Angeles and County of Santa Clara will move the
32 Board to confirm the Assessment of Pacific Bell ("Pac Bell") at \$15.070 billion, to
33 find that this assessment is consistent with the Settlement Agreement, and for other
34 relief to enforce the Settlement Agreement.

35 The motion will be based on this notice, on the briefs to be served and filed
36 herein, on all documents and records on file in this proceeding, and on such evidence
37 as may be presented at the hearing.
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1 The motion is based on the following grounds:

2 1. The Counties of Los Angeles and Santa Clara are parties to a
3 comprehensive statewide settlement agreement relating to the assessment of property.
4 The agreement was approved by all fifty-eight counties, twenty seven public utilities,
5 the State Board of Equalization, and the Attorney General.

6 2. The May 1992 Settlement Agreement was validated by a judgment of
7 the Superior Court in coordinated proceeding assigned by the Chief Justice to
8 Sacramento Superior Court Judge Peter J. McBrien. Jurisdiction to enforce the
9 validated agreement as to Pac Bell was retained by the Superior Court in Santa Clara
10 County by order of Judge John Herlihy.

11 3. The agreement provides for a settled assessment methodology for years
12 1991-1992 through 1999-2000, the dismissal of lawsuits, and a waiver of future
13 challenges to assessments calculated pursuant to the Agreement. The mutual
14 consideration for the agreement was that the parties traded the uncertainty of litigation
15 for a stable assessment formula (and an expectation of relatively stable assessments)
16 for the years in question.

17 4. The validated agreement provides for the SBE to assess according to a
18 settled formula, using the same approach it employed in 1991-2 . It has done so. In
19 each of the last five years, the SBE has calculated the formula (HCLD- 25% DTR) to
20 be approximately \$15 billion.

21 5. In July, 1996, Pac Bell mailed its "Notice to Counties of Excess
22 Property Value" and its "Petition for Unitary Property Reassessment." Pursuant to
23 the Notice and Petition, Pac Bell seeks to compel the State Board of Equalization to
24 change the manner by which it has calculated the settled assessment formula. Pac
25 Bell seeks an assessment of \$10.7 billion, 30 percent below the approximately \$15
26 billion assessment level previously set by the SBE in May, 1996. Pac Bell asserts that
27 "[t]he sole issue in this Petition is the proper interpretation of the May 1, 1992,
28 Settlement Agreement...".

1 6. Pac Bell's 1996 Notice and Petition for reassessment violates the
2 Settlement Agreement, especially Paragraph 3 of the agreement which requires the
3 SBE to assess Pac Bell according to a settled formula in the same manner as 1991-2.

4 7. Pac Bell's Notice and Petition violates Sections 1 and 19 of Article 13
5 of the California Constitution, which requires property to be assessed at its fair
6 market value.

7 8. Pac Bell's Notice and Petition violates the conditions precedent to the
8 settlement agreement set forth in Chapter 93 of the Statutes of 1992 and in the
9 Attorney General's April 1992 letter opinion approving the settlement.

10 9. Pac Bell's Notice and Petition violates the orders of the court.

11 10. Pac Bell's conduct unsettles the expectations of the parties that property
12 taxes would remain at relatively stable levels and threatens the financial stability of
13 local agencies. Were Pac Bell's contention accepted, its property tax would be
14 reduced by approximately \$50 million in fiscal year 1996-7.

15 WHEREFORE, the Counties are necessary parties to this proceeding and
16 move for the following relief:

17 1. That the Board confirm the Assessment of Pac Bell as of 1996 to be
18 \$15.070 billion, and that this value is within a reasonable range of fair market value;

19 2. That the Board find this value to have been calculated as required by
20 the Settlement Agreement, i.e., "in the same manner and using the same approach" as
21 in 1991-2;

22 3. That the Board find that the approach used in 1991-2 to calculate
23 HCLD for Pac Bell was to employ accounting and depreciation schedules which were
24 essentially the same as those used by the California Public Utilities Commission in
25 1991-2.

26 4 That the Board find that Pac Bell's proposed value of \$10.7 billion is
27 not within a reasonable range of fair market value.

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5. That the Board find that Pac Bell's Petition is a material breach of the settlement agreement and constitutes an anticipatory repudiation of the agreement;

6. That Pac Bell be ordered to submit to the SBE staff and to the Counties its complete set of audited books and reports of audit firms, and its reports to the CPUC, relevant to generally accepted value indicators reported by Pac Bell as of January 1, 1996, as well as those to be reported as of January 1, 1997, including audited books related to the pending sale to SBC Communications;

7. That this matter be referred to the Attorney General for review as to whether Pac Bell should be cited in contempt for violating the orders of the court;

8. That this matter be referred to the Attorney General for review as to whether the agreement may be terminated as to Pac Bell only, dismissing with prejudice the five lawsuits pending in Santa Clara County, and resulting in value setting to be made in 1997 in light of the fair market value as determined with reference to accepted value indicators, including data with respect to Pac Bell's pending sale;

9. For such other relief as the Board finds appropriate.

DATED: September 4, 1996

DE WITT W. CLINTON
County Counsel

By *A Ramsey*
ALBERT RAMSEYER
Senior Deputy County Counsel

Attorneys for Defendant
COUNTY OF LOS ANGELES

DATED: September 4, 1996

Steven M. Woodside
STEVEN M. WOODSIDE
County Counsel

Alameda	3,789,981
Alpine	4,573
Amador	56,061
Butte	403,673
Calaveras	100,522
Colusa	4,038
Contra Costa	2,780,583
Del Norte	0
El Dorado	312,248
Fresno	1,086,851
Glenn	61,870
Humboldt	228,492
Imperial	175,792
Inyo	8,852
Kern	813,376
Kings	138,772
Lake	153,168
Lassen	487
Los Angeles	12,225,972
Madera	133,378
Marin	495,155
Mariposa	24,927
Mendocino	220,223
Merced	267,414
Modoc	175
Mono	0
Monterey	647,778
Napa	227,810
Nevada	210,001

Orange	4,500,828
Placer	315,183
Plumas	47,231
Riverside	679,402
Sacramento	2,009,892
San Benito	72,207
San Bernardino	437,787
San Diego	4,676,784
San Francisco	3,335,116
San Joaquin	708,494
San Luis Obispo	463,074
San Mateo	1,367,831
Santa Barbara	3,879
Santa Clara	3,516,364
Santa Cruz	390,699
Shasta	292,533
Sierra	18,054
Siskiyou	100,088
Solano	509,694
Sonoma	801,834
Stanislaus	565,335
Sutter	127,856
Tehama	110,058
Trinity	4,252
Tulare	474,578
Tuolumne	123,468
Ventura	569,036
Yolo	209,015
Yuba	154,856